vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3992 OF 2005

Thakorelal & Co. ... Petitioner

V/s.

Mrs.Silloo D. Zaiwalla & ors. ... Respondents

Mr.A.V. Anturkar i/b C.N. Chavan for Petitioner
Mr.V.A. Thorat with Y.S. Jahagirdar i/b Ms.Madhavi Tavanandi for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 24, 2005**

P.C.:

. The Petition challenges the concurrent findings of fact of the Courts below. Both the Courts have held that there has been a default in payment of rent on the part of the Petitioner. The Courts have found that the Petitioner is in arrears of rent for the period from May 1992 to October 1993 and therefore, have decreed the suit.

2. Mr.Anturkar for the Petitioners submits that the contractual rent which was demanded by Respondent No.1 was an agreed amount of Rs.233.40 as per agreement of tenancy entered into between the Petitioner and the Respondents on 15.10.1961. He has, therefore, submitted

that according to this rate a mathematical calculation shows that the amount claimed in the notice i.e., Rs.4918.03, is far in excess of the contractual rent payable. He submits that he had on 12.6.1983 offered to pay a certain amount within a month of the notice being issued on May 22, 1983. The amount offered was Rs.2269.86 for the period from May 1982 to October 1983. The respondent refused to accept it. According to the learned Counsel, the Petitioner on 22.6.1983 sent a cheque of Rs.762.62 for the period from November 1982 to December 1982. The Petitioner had thus tendered the requisite amount and, therefore, there was no cause of action at all when the suit was filed.

3. This submission cannot be accepted. The tenancy agreement stipulated in clauses 3 and 4 that the tenant would be liable to pay the rent alongwith the permitted increases in municipal taxes or any other taxes that may be levied from time to time by the municipality or any other body. The Respondent had demanded rent inclusive of municipal taxes @ Rs.378.31 per month. The Petitioner did not validly tender the arrears of rent within one month of the demand notice as stipulated in law. Nor did he raise any dispute regarding the amount demanded from him in his reply to notice of demand.

4. The trial Court and the appellate Court cannot therefore, be faulted in decreeing the suit for non-payment of arrears of rent. Petition is therefore, rejected.

5. Time to vacate the suit premises is granted for a period of eight weeks from today subject to the Petitioner furnishing an undertaking in the usual terms within two weeks from today.